

Austin, Texas

February 24, 1943

TO THE MEMBERS OF THE FORTY-EIGHTH LEGISLATURE:

I regret that I am unable to approve
H. B. No. 167 which is herewith returned to the House of
Representatives.

Section 14 of Article IV of the Constitution
provides that every bill which shall have passed both
houses of the Legislature shall be presented to the Governor
for his approval. If he approve he shall sign it; but if
he disapprove it, he shall return it, with his objections,
to the House in which it originated.

My objections to this bill arise from a
belief that it is unconstitutional. The following authorities
appear to sustain my position:

Constitution of Texas, Art. 3, Sec. 56
Miller v. El Paso Co., 136 T. 370, 150 S. W. (2) 1000
Womack v. Carson, 123 T. 260, 70 S. W. (2) 416
City of Ft. Worth v. Bobbitt, 121 T. 14, 36 S. W. (2) 470
Bexar County v. Tynan, 128 T. 223, 97 S. W. (2) 467
Anderson v. Wood, 137 T. 201, 152 S. W. (2) 1084
Smith v. State, 120 Cr. R. 431, 49 S. W. (2) 739

H. B. No. 167 fixes the compensation of
County Commissioners in counties having a population of not
less than twenty-seven thousand (27,000) and not more than
twenty-seven thousand, one hundred (27,100) according to
the 1940 United States census where the taxable values in
said county shall exceed the sum of Fifty Million Dollars
(\$50,000,000) for the last preceding year.

Section 56, Article III of the Constitution
contains the following provisions:

"Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing: * * *

"Regulating the affairs of counties, cities, towns, wards or school districts; * * *

"Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts; * * *

"And in all other cases where a general law can be made applicable, no local or special law shall be enacted; * * *

The purpose of this constitutional inhibition against the enactment of local or special laws is a wholesome one. It is intended to prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible.

In the case of *Altgelt v. Gutzeit*, 109 Tex. 123, 201 S. W. 400, the Supreme Court held that an act fixing salaries of county commissioners was an act "regulating the affairs of counties" within the purview of the Constitution, and an attempt to do so by local or special law was void.

H. B. No. 167 under facts well known at the time of its passage is applicable only to a single county. Clearly then it is a local law and must fall as such, unless it can be fairly said that the class so segregated by the Act is a substantial class and has characteristics legitimately distinguishing it from the remainder of the State so as to require legislation peculiar thereto. Resort to population brackets for the purpose of classifying subjects for legislation is permissible where the spread of population is broad enough to include or segregate a substantial class, and where the population bears some real relation to the subject of legislation and affords a fair basis for the classification. It has been legitimately employed in fixing

fees of offices in certain cases (Clark v. Finley, Comptroller, 93 Tex. 171, 178, 54 S. W. 343), but even then it is permissible only where the spread of population is substantial and is sufficient to include a real class with characteristics which reasonably distinguish it from others as applied to the contemplated legislation, and affords a fair basis for the classification. Bexar County v. Tynan, 128 Tex. 223, 97 S. W. (2) 467.

An examination of the authorities above cited will reveal that the Supreme Court has repeatedly held acts of the Legislature similar to H. B. No. 167 to be unconstitutional and void. Since the courts have erected standards by which we can measure the validity of a bill, we should not put interested parties to the expense of a law suit in order to avoid the effects of an invalid law. The argument has been advanced that I could permit this bill to become a law without my signature by simply filing it with the Secretary of State. This, however, would only be following the line of least resistance on my part. It would not avoid the injury which would be done to interested parties who might attempt to follow an invalid law. Furthermore, the oath which was recently administered to me in your presence requires me to preserve, protect and defend the Constitution of this State. The import of this oath is one of affirmative action in behalf of the Constitution. If constitutional government is to survive, we must actively and vigorously support the provisions of the Constitution, as interpreted by the highest Courts of our State. These opinions being firmly fixed in my mind, I conceive it to be my duty to return H. B. No. 167 to you with my disapproval.

Respectfully submitted,


Coke Stevenson
Governor